

### **REMARKS/ARGUMENTS**

It is noted with appreciation that claim 4 has been indicated to have allowable subject matter.

On page 2 of the Office Action, the Examiner rejected claims 2-8 under 35 U.S.C. 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 2-8 have been amended in order to clear the indefiniteness from its respective limitations, and thus should be allowable. Accordingly, the claims should be in condition for allowance.

#### **Rejections under 35 U.S.C. § 103**

On page 3 of the Office Action, the Examiner has also rejected claims 1-3 and 5-8 under 35 U.S.C. § 103(a) as being unpatentable over Zimmerman in view of Nickell (6,457,905).

Applicant respectfully traverses the rejections. Applicant respectfully submits that the combination of these references is not proper, as the references do not provide a motivation to combine them. Even if properly combined, the combination does not render the claims obvious. At the outset, there is no motivation within the references to combine them. Zimmerman discloses a hydro-disintegrator for dispersing animal droppings on the lawn, that includes pins 32. Specifically, this construction prevents the tips of pins 32 from striking the surface of the lawn. (Column 2, lines 61-65).

The Examiner states that it would be obvious to take the disintegrator of Zimmerman with the compressed gas of Nickell to arrive at Applicant's invention (Office Action, page 4). However, there is no motivation to seek an improvement in the disintegrator for Zimmerman, which discloses a hydro-disintegrator for dispersing animal droppings that mixes water with a detergent, as well as uses water to clean the pins 32 of the animal droppings thereon. Nickell discloses a deep remediation injection system for in-situ remediation of contaminated soil and

ground water that includes a soil penetrating lance for injecting at least two different highly-pressurized fluids. In particular, Zimmerman fails to disclose either a soil injection system or a soil penetrating lance for injecting at least two different highly-pressurized fluids. Thus, there is no motivation to combine the hydro-disintegrator of Zimmerman with the soil penetrating lance for injecting at least two different highly-pressurized fluids of Nickell, as the combination would result in a hydro-disintegrator that is contrary to the disclosure of Zimmerman to prevent the tips of pins 32 from striking the surface of the lawn. (Column 2, lines 61-65). Therefore, these references teach away from combining them.

Further, Applicant submits that the hydro-disintegrator of Zimmerman would result in a hydro-disintegrator that lacks pins 32 that do not strike the lawn in favor pins that penetrate the lawn and damage the same. Therefore, Zimmerman fails to provide an enabling disclosure for a ground engaging portion that is driven into soil and does not provide sufficient disclosure for providing a compressed gas delivery means including an outlet disposed within the shroud. Applicant's invention, and specifically the combined use of a ground engaging portion that is driven into soil and a compressed gas delivery means including an outlet disposed within the shroud, shows a dramatically improved hole forming tool when compared with the hydro-disintegrator for animal droppings disclosed in Zimmerman.

Even if these references were properly combinable, Zimmerman alone or in combination with Nickell does not disclose or render obvious Applicant's invention. Specifically, this combination of references and the reasons given by the Examiner for the combination do not disclose what is required by the Applicant's claims – a ground engaging portion that is driven into soil and a compressed gas delivery means including an outlet disposed within the shroud. This combination also does not teach or suggest a hydro-disintegrator expressly or inherently having the claimed requirements of Applicant's hole

forming tool. It is advantageous to provide a hole forming tool that has a ground engaging portion that is driven into soil and a compressed gas delivery means including an outlet disposed within the shroud. One advantage to using hole forming tool of the present invention is that the compressed air emanating from nozzle 26 excavates the ground in the region of nozzle 26. (Page 5, lines 9-10).

Another advantage is that the soil which is excavated is broken down and forced upwards and out of exhaust end 20 by the compressed air. (Page 5, lines 10-12). The hydro-disintegrator of Zimmerman could not be used to provide a hole forming tool, and subsequent excavation of broken down soil forced upwards and out of exhaust end 20 by the compressed air, resulting from the use of a ground engaging portion that is driven into soil and a compressed gas delivery means including an outlet disposed within the shroud. Thus the hydro-disintegrator of Zimmerman is unsuitable.

The Examiner has failed to establish a prima facie case for obviousness of claims 1-3 and 5-8. It is the Examiner's burden to show that the prior art relied upon coupled with the knowledge generally available in the art at the time of the invention must contain a suggestion or incentive that would have motivated one of ordinary skill in the art to combine references. As Applicant has set forth throughout this response, the distinctive differences between the individual references makes the combination of these references implausible. The Examiner must also show that the proposed combination must have a reasonable expectation of success. It is inappropriate for the Examiner to use the present application as a motivation to combine the references. This inappropriate combination, taking bits and pieces from each reference in an attempt to create Applicant's invention, is exactly what the Examiner has done with these references.

Therefore, since Zimmerman, in view of Nickell fails to teach or disclose a a ground engaging portion that is driven into soil, including a compressed gas delivery means

including an outlet disposed within the shroud, Applicant respectfully submits it does not anticipate or render obvious any of the pending claims.

Thus, Applicants respectfully request reconsideration and withdrawal of the § 103 rejection as to these claims.

**Conclusion**

Having analyzed the rejections cited against the claims, it is urged that the present claims are in condition for allowance. A favorable reconsideration is requested. The Examiner is invited to contact the undersigned attorney to discuss any matters pertaining to the present application.

Respectfully submitted,

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